

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

FAO (MVA) No. 33 of 2000

Date of Decision: 7th August, 2006.

Yadvinder

Appellant

Versus

Meer Singh Negi and another

Respondents

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting¹?

For the appellant: Mr.Ashwani Pathak, Advocate.

For the respondent: Mr.Aman Sood, Advocate, vice
Mr.N.K.Sood, Advocate, for
respondent No.1.

Mr.Anoop Rattan, Advocate,
vice counsel for respondent
No.2.

V.K.Gupta, C.J. (Oral)

This is an appeal for enhancement of the compensation filed by the appellant under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 30th October, 1999 passed by the learned Motor Accident Claims Tribunal-II, Mandi, in Claim Petition No.22 of 1995.

The appellant-claimant was injured in a motor accident occurring on 15th October, 1994 while

Whether the reporters of Local Papers are allowed to see the Judgment?

he was travelling in Bus No. HP-34-2377 from Banjar to Aut. There were a number of casualties arising out of this accident. The appellant-claimant had suffered multiple injuries. The following issues were framed by the Tribunal:-

- "1) Whether the accident took place on 15.10.1994 at 9 AM at Dari due to rash and negligent driving of vehicle No. HP-34-2377 by the driver in which petitioner sustained injuries as alleged? OPP
- 2) Whether the petitioner is entitled to compensation, if so, to what amount and from whom? OPP
- 3) Whether the driver of the vehicle was not having driving licence, if so its effect? OPR
- 4) Whether the Insurance Policy is void as obtained by the non disclosure of the material facts and there is also breach of the policy terms and conditions and Insurance Policy requires the verification of 64-B? OPR
- 5) Whether there were contravention of provision of the Motor vehicles Act and registration certificate, if so its effect? OPR
- 6) Relief"

The findings on Issues No.1 and 2 having gone in favour of the appellant-claimant, the Tribunal assessed the total compensation at Rs.2,20,000/- and accordingly passed an award of this

amount, minus Rs.12,000/- which had been awarded to the appellant under Section 140 of the Act.

While discussing Issue No.2, the learned Tribunal noted that after the accident the appellant was admitted in District Hospital, Kullu, where he remained upto 20th October, 1994. He was referred to Rajendra Hospital and Medical College, Patiala, where he was admitted on 21st October, 1994 and remained there as an indoor patient till 22nd October, 1994. The Medical Officers conducted numerous tests upon the appellant causing great mental shock, pain and agony to him. At the time of accident the age of the appellant was 16 years and he was studying in class 7th. The proved case of the appellant before the Tribunal was that because of his suffering 100% permanent disability, he could not continue his studies any more, which had to be abandoned. His entire future career has been spoiled. He cannot be taken from one place to another without a permanent attendant. Even for evacuating the night soil he needs the help of an attendant.

The injuries suffered by the appellant are in the spinal cord. The appellant cannot use his lower limbs. PW-3 Dr. Om Pal Sharma, Orthopedic Surgeon, had clearly opined during the course of his examination-in-chief as well as in cross-examination that the appellant had suffered from the injuries of

compression fracture L-12, L-1 with paraplegia. He was having complete paraplegic suffering 100% permanent disability.

Based on the evidence available before itself the Tribunal granted compensation to the appellant under the following four heads:-

Rs.10,000/-	On account of cost of medical treatment, past as well as future and for the conveyance charges;
Rs.10,000/-	On account of cost of an attendant during the period of his medical treatment for about one year.
Rs.25,000/-	On account of physical pain, and suffering as well as mental shock because the appellant had been admitted in two Hospitals, especially in Rajendra Hospital, Patiala, where he remained as an indoor patient for two months and he was operated upon a number of times there.
Rs.1,75,000/-	Loss of amenities of life, loss of future earning capacity and loss of expectation of life.

When this case came up before this Court on 5th August, 2004, this Court had some doubts about the extent of the appellant's disability, whether it was permanent, or temporary, or partial, or complete. Based upon the statements made by the learned counsel

for the parties at that time and with a view to arriving at a proper conclusion to assess the disability of the appellant and extent of disability this Court had directed that the appellant be re-examined by a properly constituted Medical Board. As a consequence of and by way of implementation of the aforesaid direction issued by this Court, a Medical Board, constituted by the Principal, Indira Gandhi Medical College, Shimla, comprising of Senior Medical Superintendent as its Chairman and Professors and Heads, departments of Orthopedics and Surgery, as its two Members examined the appellant on 6th September, 2004 and rendered the following opinion:-

"On examination of the previous medical record of the patient it is found that initially he was admitted in District Hospital, Kullu on 15.10.1994 to 20.10.1994 and was referred to Paraplegia Centre, Rajindra Hospital Patiala (Pb.). The patient was suffering from Injury of Thoraico-Lumber Spine (D-12, L-1) with paraplegia. He remained admitted in Rajindra Hospital, Patiala w.e.f. 12.5.1995 to 20.5.1995 vide Cr No. 12947. Thereafter he was referred back to District Hospital Kullu for follow up treatment.

On examination of Shri Yadvinder by the Medical Board today on 6.9.2004 at 3.00 PM, the medical board is of the opinion that the patient is suffering from complete

paraplegia as a result of fracture D-12, L-1 vertebra. The disability is permanent in nature and is assessed 100% (HUNDRED PERCENT) in relation to Lower half of the body."

Undoubtedly the opinion of the Medical Board confirms the earlier opinion of the Doctor and reiterates that the appellant is suffering from complete paraplegia as a result of the fracture of D-12 and L-1 vertebra and the disability is permanent in nature and is assessed at 100% in relation to lower half of the appellant's body.

Taking a complete and overall picture resulting and emanating from the aforesaid injury scenario of the appellant, it can safely be said that for the rest of his life the appellant, who was a young boy of 16 years at the time of the accident, has been practically reduced to vegetable because it is a common knowledge that the fracture of D-12 and L-1 vertebra does render the person incapacitated and totally incapable of performing any functions as far as the lower limbs are concerned. Without, therefore, disturbing in any manner the compensation quantified under three other heads, in so far as the compensation assessed under the head of "loss of amenities of life, loss of future earning capacity as well as loss of future expectation of life" is

concerned, in my considered opinion the learned Tribunal by awarding Rs.1,75,000/- on this account committed an error because this indeed is an unreasonably very low amount of compensation. In my considered opinion and looking to all the relevant aspects of the case, more particularly the fact that the appellant was of 16 years at the time of accident and was a student studying in class VII, and further because of this accident his entire career has been brought to an end, compensation of Rs.3,50,000/- under the aforesaid head should be just, adequate and reasonable.

Mr.Pathak, learned counsel for the appellant also submitted that even while awarding the compensation of Rs.2,20,000/-, the Tribunal did not award any interest pendente lite on the aforesaid compensation amount and merely ordered and directed that if the aforesaid amount was not paid within one month from the date of the passing of the award, it shall carry simple interest @ 12% per annum from the date of the award.

Under Section 171 of the Motor vehicles Act, 1988 it has clearly been provided and laid down that where any Claims Tribunal allows a claim for compensation under the said Act, it may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from

such date not earlier than the date of making the claim. By now it is very well established that on a proper interpretation of Section 171 (supra), it is the bounden duty of every Claims Tribunal to award interest at an appropriate rate from the date of the filing of the claim Petition till the amount is paid to the claimant. In this case by not doing so the Tribunal has clearly committed an error.

The Claim Petition was filed on 6th March, 1995. The award was passed on 30th October, 1999. The appellant, therefore, is held entitled to the award of interest on the amount of Rs.2,20,000/- from the date of the filing of the Claim Petition i.e. 6th March, 1995 upto 30th October, 1999. I think awarding interest at the rate of 6% per annum on the aforesaid amount of Rs.2,20,000/- for the aforesaid period between 6th March, 1995 upto 30th October, 1999, shall be just, appropriate and reasonable. In so far as the awarding of interest on the enhanced amount of compensation, the enhanced amount being Rs.1,75,000/- in my considered opinion the respondent-Insurer should not be burdened with the liability of paying interest on this amount because the said enhancement has been done in this appeal and was not a part of the original award.

In the ultimate analysis, I direct as under:-

- 1) Respondent No.2 shall pay to the appellant interest on Rs.2,20,000/- at the rate of 6% per annum for the period 6th March, 1995 to 30th October, 1999.
- 2) The respondent No.2 shall pay to the appellant the enhanced amount of Rs.1,75,000/- within four weeks from today, or deposit the same within the same period before the learned Claims Tribunal. If this is not done within the said period, it shall pay interest on this amount to the appellant at the rate of 12% per annum, interest liability starting from today and continuing upto the date the amount is actually paid.

The appeal accordingly is allowed. The impugned judgment and award is modified to the aforesaid extent. No order as to costs.

CMP No.517/2005

In view of the disposal of the appeal, the present application is also disposed of.

7th August, 2006
(C)

(V.K.Gupta), C.J.

